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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/600,062	06/20/2003	Donald Ray Heller	ROC920030002US1	5660
30206	7590	04/19/2006		
IBM CORPORATION ROCHESTER IP LAW DEPT. 917 3605 HIGHWAY 52 NORTH ROCHESTER, MN 55901-7829				
EXAMINER MOSSER, KATHLEEN MICHELE				
ART UNIT		PAPER NUMBER		
3715				

DATE MAILED: 04/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/600,062

Applicant(s)

HELLER ET AL.

Examiner

Kathleen Mosser

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 17 is/are allowed.
- 6) ☒ Claim(s) 1,2,7 and 9-12 is/are rejected.
- 7) ☒ Claim(s) 3-6, 8 and 13-16 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>06/20/03</u> | 6) <input type="checkbox"/> Other: ____ |

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DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

1. Claims 1, 2, 7, and 9-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sweitzer et al (US 6018617) in view of Sonnenfeld (US 6112049). Sweitzer et al teaches a test creation system including: generating a plurality of multiple choice variant questions, each variant question having multiple variants (Figure 3 and at least col. 6: 11-14); defining a plurality of versions of said mental competency test, each version containing a respective unique set of variants of said plurality of variant questions, each version containing no more than one variant of each respective variant question, wherein no two of said respective unique sets of variants are identical (see col. 15: 48 – col. 16: 6), as in claims 1 and 11. The process is performed by a computer system (claim 9), see at least col. 5: 19-33. regarding claims 10 and 12, the specific features of defining the test and tracking which question is present on which version are taught in at least col. 15: 52-56, Table 11, and the description of the Worksheet editor, starting at col. 17: 63).

Sweitzer fails to explicitly teach the administration of the exams to one or more test subjects (claim 1) specifically that the exam is administered by a computer (claim 7). Sonnenfeld teaches a

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computer system for the creation and administration of tests, particularly the administration of the test over a computer system, see col. 2: 32-45. It would have been obvious to one of ordinary skill in the art to incorporate the administration features of the Sonnenfeld system into the Sweitzer et al system so as to allow a user to take the generated test.

Regarding claims 2 and 11, neither Sweitzer nor Sonnenfeld explicitly teaches analyzing responses of the test subject to detect patterns of probably unauthorized access to a different version of said mental competency test difference from the version to which the test subject responds. The examiner takes OFFICIAL NOTICE that performing such an analysis is old and well-known in the art of teaching. As admitted by applicant, and prevalent in the prior art, the administration of multiple versions of a test is well known in the art of education. It is the examiner's position that it is also well-known for a teacher, when grading such exams to compare the answers of one student to those of students seated near-by to detect cheating. The exam of the other student is commonly another version of the test (the intent of using multiple versions of the test). It would have been obvious to include this old and well-known feature into the inventions of Sweitzer et al and Sonnenfeld so as to allow the administrator of the tests to determine if a student has cheated on the exam.

Allowable Subject Matter

2. Claims 3-6, 8 and 13-16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
3. Claim 17 is allowed.

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Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
 - a. Walker et al (US 5947747) teaches a computer system where questions can be randomly distributed in an exam

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kathleen Mosser whose telephone number is (571) 272-4435. The examiner can normally be reached on M-F 8:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Monica Carter can be reached on (571) 272-4475. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Kathleen Mosser
Primary Examiner
Art Unit 3715

April 17, 2006